IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 20 of 2004

Gandan Lal ……..…….. Appellant

Versus

Distt. Manager,
Food Corporation of India,
Bhotiya Parawa, Haldwani
(Nainital) and others ……..……. Respondents

Sri S.K.Mandal, Advocate, learned counsel for the appellant
Sri M.C.Pande, Advocate, learned counsel for the respondents.

Coram: Hon. V.S.Sirpurkar, C.J.
Hon. Irshad Hussain, J.

Dated: August 10, 2004

PC:

1. The original controversy involved in this appeal was in respect of the order by which the appellant, who was working as a Cleaner was transferred to Pithoiragarh to work in Watch and Ward Department. He had initially filed a writ petition, which was disposed by the learned Single Judge, who considered all the matters including the contention of the appellant/petitioner that no ex-cadre transfer could be made, much less by the Divisional Manager. The learned Single Judge allowed six weeks time in his judgment, during which the transfer order was to be kept in abeyance and permitted the petitioner to make a representation against the mid-term transfer or as the case may be ex-cadre transfer. For that six weeks time was given. Instead of making that representation, the appellant seems to have made a representation on 16.03.2004 by which he merely complained that he was not allowed to report at Rudrapur in pursuance of the order passed by the learned Single Judge, by which the learned Single Judge has kept the said order in abeyance for six weeks. There is only one line stated in that representation to the following effect:

"and also decide the compliance of the ex-cadre transfer".

2. On this, an order came to be passed by the respondent no.1 on 09.07.2004. The department took the view that the order of transfer to

Pithoragarh was perfectly justified and there was no question of transfer being an ex-cadre transfer. They probably took that view as his pay and perks were not reduced at all by his being posted at Pithoragarh in Watch and Ward Department. It is that order, which came before the learned Single Judge, who dismissed the same in limine taking the view that it was a simple transfer matter and the concerned officer has perfect authority to effect the transfer as per Rules. He found that there was no mala fide in the transfer order as well. In that view, the learned Single Judge dismissed the writ petition.

3. The present first appeal is against that order. The learned counsel for the appellant has contended that in his representation dated 16.03.2004, he has raised the question of ex cadre transfer and the question of ex cadre transfer should have been decided by the authorities concerned. The learned counsel urges that the order passed on 09.07.2004 does not take into consideration the nature of the transfer and the contention raised that the said transfer was contrary to the Rules as it had the effect of down-grading the petitioner from the post of Cleaner to the post of Watch-man. We have carefully gone through the impugned order dated 09.07.2004, where undisputedly at the end of the third paragraph there in observation that the transfer has not changed his cadre or pay or perks. Though strictly speaking, there was no proper representation before the authorities in terms of the first order passed by the Tandon, J. The authorities were bound to take into consideration the factum of the transfer being from the post of Cleaner to the post of Watch-man. That in our opinion has not been satisfactorily done. We, therefore, partly allow the appeal and direct the appellant/petitioner to join his duties at Pithoragarh. He shall after joining his duties at Pithoragarh within 7 days of joining, make representation to the Department, more particularly respondent no.3 herein. In that representation, we permit him to raise the question of mid-term transfer and the nature of the cadre of the transfer, being ex-cadre and permissibility of it. These are only two questions on which he shall make representation in the light of the available Rules.

The representation, if so received by the respondent no. 3, he shall decide that representation within three months from the receipt thereof and intimate the result to the petitioner. However, as condition precedent, the petitioner must first report to Pithorgarh to join on the transferred post and continue to serve the department in the said post. It is made clear for that purpose petitioner shall not apply for leave and it is only after joining and commencement of his service that he shall be allowed to make representation.

4. It is reported that the petitioner has not been paid his salary. The department shall decide the question of the salary also in the light of the available rules.

5. With the above observations, the appeal is partly allowed.

(Irshad Hussain, J.) **(V.S.Sirpurkar, C.J.)**
10.08.2004 10.08.2004

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